UNITED STATES PATENT AND TRADEMARK OFFICE

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09/932,431	08/17/2001	Gary Stephen Shuster	409475-40	3441

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/932,431
Filing Date: August 17, 2001
Appellant(s): SHUSTER, GARY STEPHEN

Jonathan Jaech
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 1, 2006 appealing from the Office

action mailed June 3, 2005.

(1)   Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2)   Related Appeals and Interferences

A statement identifying the related appeals and interferences, which will directly

affect or be directly affected by or have a bearing on the decision in the pending appeal

is contained in the brief.

(3)   Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4)   Status of Amendments After Final

Amendment after final was filed.

(5)   Summary of Invention   .

The summary of the claimed subject matter is contained in the brief.

(6)   Grouping of Claims

The rejection of claims 21-36 stand or fall together. See 37 CFR 1.192(c)(7).

(7)   Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8)   Prior Art of Record

| 6,578,077 B1 | Rakoshitz et al. | 06-2003 |

(9)   Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 21-36 are rejected under 35 U.S.C. 102(e). This rejection is set forth in a

prior office action, mailed on 04-05-2006.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2.   Claims 21-36 are rejected under 35 U.S.C. 102(e) as being anticipated by

Rakoshitz et al (U.S. 6,578,077 B1).

3.   A per claims 21 & 29 Rakoshitz disclosed a method for operating a server group

to improve bandwidth efficiency in a computer network, wherein the server group is

operable to transmit files between the server group and destinations on the computer

network through a communication link having a finite bandwidth (col.6, lines 3-13, the

method comprising: monitoring bandwidth usage of a communication link for connecting

a server group to a wide area network, using software operably associated with the

communication link; distributing a rule set to individual servers of the server farm,

wherein the rule set defines rules for limiting serving of data from the individual servers

depending on file type and a current state of the bandwidth usage (col.9, lines 24-62);

characterizing files stored in operable association with the individual servers according

to type, using software operating on the individual servers (col.15, lines 42-56) ;

informing the individual servers of the current state of the bandwidth usage as

monitored by the software operably associated with the communication link; and serving

the files from the individual servers to the wide area network via the communication link

in compliance with the rule set, so as to limit serving of specified file types from the

servers during periods when the bandwidth usage exceeds a threshold amount relative

to a finite bandwidth of the communication link (col.14, lines 57-62).

4.   A per claims 22, 23 & 24 Rakoshitz disclosed the method of Claim 22, wherein

the characterizing step further comprises characterizing a type of each of the files based

on a corresponding file name extension for each file (col.14, lines 41-44 & col.15, lines

42-56).

5.   A per claims 24 & 32 Rakoshitz disclosed the method of Claim 21, wherein the

characterizing step further comprises crawling through a memory operably associated

with the server to identify associated groups of files, wherein each of the groups of files

is configured to be aggregated into a larger file (col.9, lines 24-62 & col.15, lines 42-67).

6.   As per claims 25 & 33 Rakoshitz disclosed the method of Claim 21, wherein the

characterizing step further comprises crawling through files stored in a storage device

operably associated with the server to identify files that do not contain hyperlinks and

are not identified by hyperlinks in other files stored by the storage device(col.9, lines 24-

30 & col.15, lines 42-67).

7.   A per claims 26 & 34 Rakoshitz disclosed the method of Claim 21, wherein the

serving step further comprises selecting a rule from the rule set according to the current

state of the bandwidth usage (col.9, lines 49-62)

8.   A per claims 27 & 35 Rakoshitz disclosed the method of Claim 21, further

comprising distributing a replacement rule set to individual servers of the server group

when the current state of the bandwidth usage changes by more than a specified

amount, wherein the replacement rule set replaces the rule set and defines rules for

limiting serving of data from the individual servers depending on file type and a current

state of the bandwidth usage (col.9, lines 24-62).

9.   A per claims 28 & 36 Rakoshitz disclosed the method of Claim 21, further

comprising repeating the informing step at periodic intervals (col.20, lines 42-65).

(10) Response to Arguments

The applicant argues the following issues regarding **claims 21-23, 26, 28-31, 34 & 36 (Group I); Claims 24 & 32 (Group II); Claims 25 & 33 (Group III) and Claims 27 & 35 (Group IV)** to support his position against the prior art Rakoshitz et al. U.S 6,578,077 B1.

(A)   _Rejection under 35 U.S.C 102(e) with regards to claims 21(Independent)-23,_

26(Independent), 28-31, 34 & 36 (Group I)

<u>Issue 1:</u>   **The applicant on page 9 cited specific paragraphs from Rakoshitz**

and argued that bandwidth management tool disclosed by Rakoshitz is limited to

being deployed at a single point, which is generally a gateway point.

As to applicant argument and citing of selective paragraphs from Rakoshitz on page 9

of the appeal brief, the examiner would like to state that applicant has overlooked

alternate embodiments that Rakoshitz reference has mentioned that disclose the

bandwidth management tool being deployed at various locations in the network.

Rakoshitz in an alternate embodiment on col.9 lines 27-38 clearly states:

> "In a preferred embodiment, the bandwidth management tool 208 can be
>
> loaded onto a server without any changes to the hardware. In an alternate
>
> preferred embodiment, the tool can install, configure, and can operate on
>
> a conventional IBM compatible PC running and operating system such as,
>
> for example, windows NT, but can be others. <u>The tool can be deployed in</u>
>
> <u>any appropriate point in the network data path."</u>

Additionally on col.8, lines 44-55 Rakoshitz again clearly states the following:

> "*For instance, the present bandwidth management* <u>*tool can be applied at a*</u>
>
> <u>*network's Internet access link*</u>*. Alternatively, the* <u>*present tool can be applied to a*</u>
>
> <u>*private WAN link*</u> *to a remote corporate site* ***or an access to a server farm (e.g.,***
>
> ***a group of servers located in a special part of a network close to an access***
>
> ***link, e.g., in a web hosting environment).*** *Alternatively, the present invention*
>
> <u>*can be applied to key servers*</u> *(e.g., database/web servers) within an organization*
>
> *servicing internal and or external users. Furthermore, the present bandwidth*
>
> *management tool can be applied to any combination of the above or the like*".

Examiner believes that the above verbatim citations from Rakoshitz should be sufficient in proving that bandwidth management tool can be deployed at multiple locations in a variety of network scenarios.

Issue 2: **The applicant states (on page 10) that Rakoshitz does not disclose two separate software performing separate functions.**

As to applicant's argument Rakoshitz explains on col.2, lines 66-67 & col.3, lines 1-15 that the bandwidth-profiling tool includes a variety of computer codes to form computer software or a computer program, which is stored in a computer memory. The program includes a **first code** that is directed to <u>measuring a data rate</u> for the flow of information

from an incoming source, which is coupled to a network of computers. The program has

a **second code** that is directed to <u>categorizing the data rate</u> from the flow of information

<u>based upon at least one of the plurality of traffic classes</u>. Therefore Rakoshitz is clearly

defining separate software codes that are performing separate functions.

**Issue 2:   The applicant states (on page 10) that Rakoshitz does not disclose
distributing a rule set to individual servers of a group of server.**

As to applicants argument the examiner would like to point to the statement by

Rakoshitz on col.8, lines 44-55, which states the following:

> "*For instance, the present bandwidth management <u>tool can be applied at a</u>*
>
> <u>*network's Internet access link*</u>*. Alternatively, the <u>present tool can be applied to a</u>*
>
> <u>*private WAN link*</u> *to a remote corporate site **or an access to a server farm (e.g.,***
>
> ***a group of servers located in a special part of a network close to an access***
>
> ***link, e.g., in a web hosting environment)***. *Alternatively, the present invention*
>
> <u>*can be applied to key servers*</u> *(e.g., database/web servers) within an organization*
>
> *servicing internal and or external users. Furthermore, the present bandwidth*
>
> *management tool can be applied to any combination of the above or the like*".

Therefore in the above discloser Rakoshitz clearly discloses distributing bandwidth

management tool to various components of the network to include individual servers in

various environments.

(B)   _Rejection under 35 U.S.C 102(e) with regards to dependent claims 24 & 32_

(Group II)

Issue 1:   Applicant argued that Rakoshitz does not disclose the limitation, which defines crawling through a memory operably associated with the individual server to identify associated groups of file.

As to applicants argument Rakoshitz on col.2, lines 66-67 & col.3, lines 1-15 discloses that a variety of computer codes performing various functionality are stored in the memory (RAM) portion of a computer (PC, Server or computing device) in a network. Rakoshitz further defines one of the functionality of the computer codes stored in the memory as being categorizing data based upon at least one of a plurality of traffic classes (Example, voice, video or data). Therefore Rakoshitz does disclose having the bandwidth controlling/profiling tool present in the memory of a network-computing device (e.g. PC, server etc).

(C)   _Rejection under 35 U.S.C 102(e) with regards to dependent claims 25 & 33_

(Group III)

Issue 1:   **Applicant argued on page 13 that that Rakoshitz does not disclose**

any action identifying files that do not contain hyperlinks and are not identified by

hyperlinks in other files stored by the storage device.

As to applicant's argument Rakoshitz on col.7, lines 61-67 & col.8, lines 1-4 discloses

that the present invention can be used with a number of various files. For example ,

GIF, JPEG and MPEG, RA and AVI files.

(D)   _Rejection under 35 U.S.C 102(e) with regards to claims 27 & 35 (Group IV)_

Issue 1:   **Applicant on page 14 merely states that Rakoshitz does not disclose**

the dependent claim 27.

As to applicant's argument Rakoshitz discloses the limitations of claim 27 on col.9, lines

24-62.

Issue 2:   **Applicant on page 14 again argues that bandwidth management tool**

disclosed by Rakoshitz is limited to being deployed at a single point, which is

generally a gateway point.

As to applicants argument the examiner again states that on col.8, lines 44-55

Rakoshitz clearly states the following:

> "*For instance, the present bandwidth management <u>tool can be applied at a</u>*
>
> *<u>network's Internet access link</u>. Alternatively, the <u>present tool can be applied to a</u>*
>
> *<u>private WAN link</u> to a remote corporate site <u>**or an access to a server farm (e.g.,**</u>*
>
> *<u>**a group of servers located in a special part of a network close to an access**</u>*
>
> *<u>**link, e.g., in a web hosting environment).**</u> Alternatively, the present invention*
>
> *<u>can be applied to key servers</u> (e.g., database/web servers) within an organization*
>
> *servicing internal and or external users. Furthermore, the present bandwidth*
>
> *management tool can be applied to any combination of the above or the like".*

Examiner believes that the above verbatim citations from Rakoshitz should be sufficient

in proving that bandwidth management tool can be deployed at multiple locations in a

variety of network scenarios.

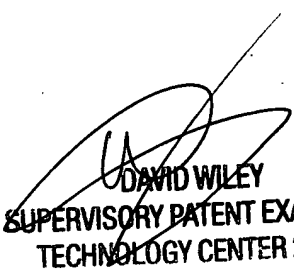For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Art Unit 2143
November 15, 2006

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